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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 65.

MARTHA I. HUNT, PLAINTIFF IN ERROR,

vs.

THE SPRINGFIELD FIRE AND MARINE INSURANCE COMPANY.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

FILED JUNE 24, 1904.

(18,983.)

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IN ERROR TO

Caption .....
Transcript from the
Caption .....
Declaration. ..
Pleas.....
Demurrer.....
Demurrer overr
Judgment, appe
Memorandum:
Directions to cl
Clerk's certifica
Minute entry of arg
Opinion .....
Judgment.....
Order allowing writ
Writ of error. ...
Bond on writ of er
Citation and service
Clerk's certificate. ..

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INDEX.

	Original.	Print.
.....	1	1
the supreme court of the District of Columbia....	1	1
.....	1	1
.....	1	1
.....	3	3
.....	5	5
verruled.....	5	5
appeal, and penalty of bond fixed.....	6	6
m: Appeal bond filed.....	6	6
to clerk for preparation of transcript.....	6	6
tificate.....	7	7
f argument.....	8	7
.....	9	7
.....	11	9
writ of error.....	11	9
.....	12	9
f error.....	13	10
rvice.....	14	11
te.....	15	11

TWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 21, 1904.

1 In the Court of Appeals of the District of Columbia.

MARTHA I. HUNT, Appellant,
vs.
THE SPRINGFIELD FIRE AND MARINE INSURANCE COMPANY, a Corporation. } No. 1169.

Supreme Court of the District of Columbia.

MARTHA I. HUNT
vs.
THE SPRINGFIELD FIRE AND MARINE INSURANCE COMPANY. } No. 44753. At Law.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

Declaration.

Filed June 18, 1901.

In the Supreme Court of the District of Columbia.

MARTHA I. HUNT, Plaintiff,
vs.
THE SPRINGFIELD FIRE AND MARINE INS. COMPANY (a Corporation), Defendant. } At Law. No. 44753.

The plaintiff, Martha I. Hunt, sues the defendant, The Springfield Fire and Marine Insurance Company, a corporation incorporated under the laws of the State of Massachusetts and engaged in doing business within the District of Columbia, for that:

First. Whereas heretofore, to wit, on or about the 2nd day of February, 1901, at the city of Washington, in the District of Columbia, by a certain policy of insurance then and there made, for and in consideration of the stipulations therein recited and the payment by the plaintiff to the defendant of the sum of fifteen dollars as a premium, the defendant did insure the plaintiff for the term of one year from on or about the 2nd day of February, 1901, against all direct loss or damage by fire, provided that such loss was not
2 caused, directly or indirectly, by invasion, insurrection, riot, civil war, or commotion, or military or usurped power, or by

order of any civil authority, or by theft, or by neglect of the insured to use all reasonable means to save and preserve the property at and after the fire, or by explosion of any kind, to an amount not exceeding the sum of five thousand dollars ($5,000.00), on the following-described property named in said policy of insurance, to wit, household furniture, useful and ornamental beds, bedding, linen, carpets, printed books, mirrors, musical instruments, music, sewing machines, family wearing apparel, fuel, family stores, trunks, valises, umbrellas, bicycles, plate and plated ware, pictures and their frames, statuary, and ornaments contained in the two-story metal-roofed brick dwelling situate at No. 1636 Sixteenth street N. W., in the city of Washington, District of Columbia, and by the terms of the policy the defendant agreed to pay the plaintiff the amount of any such loss, not exceeding the amount of the said insurance, at the expiration of sixty days after the defendant had been furnished by the plaintiff with proofs of such loss; and the plaintiff says that at the time of the making of the said policy of insurance, and from thence until the loss and damage hereinafter mentioned, — was possessed as sole owner of the said insured property in the said policy mentioned and thereby intended to be insured; and the plaintiff says that the premium in said policy mentioned was at the time of the making thereof duly paid by her to the defendant; and the plaintiff further says that after the making of the said policy and whilst the same was and remained in full force, to wit, on or about the February 16th and February 17th, 1901, the said insured property was burned, damaged, consumed, and destroyed by fire, whereby the plaintiff sustained loss and damage, to wit, five thousand dollars; and the plaintiff further says that although she has in all things conformed herself to and performed and observed all and singular the stipulations in said policy mentioned and on her part to be performed and observed according to the true intent and meaning thereof, and although the proofs of the said loss in due form and in accordance with the stipulations in the said policy of insurance contained were furnished by the plaintiff to the defendant on the 2nd day of April, 1901, and the plaintiff then offered to furnish the defendant with such further proof of the said loss as it might be entitled to request of her, yet the plaintiff says that, although upwards of sixty days have elapsed since the said 2nd of April, 1901, the defendant has refused to pay her the said loss or any part thereof, and the defendant and its agents have refused to replace or repair the said insured property which was burned, damaged, and destroyed, as aforesaid, with property of like kind and quality, or with any property whatsoever, such refusal on the part of the defendant being contrary to the true intent and meaning of the said policy of insurance and of the agreement of the defendant in that behalf made and set forth as aforesaid; and the plaintiff says the defendant,
3 although often requested so to do, has refused to perform its said agreement and has broken the same, and to perform the same does still refuse, and the plaintiff claims the sum of five

thousand and twelve $\frac{50}{100}$ dollars ($5,012.50), being the total amount of the policy, and $12.50 interest on same from June 2nd, 1901, to June 17th, 1901, together with interest thereon from June 17th, 1901, besides the costs.

Second. For money payable by the defendant to the plaintiff for goods sold and delivered by the plaintiff to the defendant and for work done and materials provided by the plaintiff for the defendant at its request, and for money lent by the plaintiff to the defendant, and for money paid by the plaintiff for the defendant at its request, and for money received by the defendant for the use of the plaintiff, and for money found to be due from the defendant to the plaintiff on accounts stated between them, and the plaintiff claims the sum of five thousand and twelve $\frac{50}{100}$ — ($5,012.*50*), with interests besides costs.

JOHN C. GITTINGS,
Attorney for Plaintiff.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of service hereof; otherwise judgment.

JOHN C. GITTINGS,
Attorney for Plaintiff.

Defendant's Pleas.

Filed July 9, 1901.

In the Supreme Court of the District of Columbia.

MARTHA I. HUNT, Plaintiff, *vs.* THE SPRINGFIELD FIRE AND MARINE INS. Company (a Corporation), Defendants.	}	At Law. No. 44753.

* * * * * * *

4. For a further plea to the first count of the plaintiff's declaration the defendant says that in and by said policy of insurance it was provided that it should be void if the interest of the insured in the property insured at the time of the insurance was other than unconditional and sole ownership; and the defendant says that at the time of said insurance the plaintiff was not the unconditional and sole owner of the property insured, in this, that prior to said insurance the plaintiff had conveyed said property or a part thereof

(*a*) to A. H. Williams and C. H. Willard, by deed dated September 4, 1900, which was recorded September 25, 1900, in Liber 2526, folio 20, of the land records of the District of Columbia, said deed being a deed in trust to secure the payment to C. Webster of the

sum of one hundred and eleven dollars and seventy cents
4 ($111.70), with interest, the property covered by said deed of trust being more particularly described in said deed of trust and a schedule thereto attached;

and (*b*) to A. H. Williams and C. H. Willard, by deed dated October 4, 1900, and recorded November 7, 1900, in Liber 2487, folio 438, of the land records of the District of Columbia, said deed being a deed in trust to secure payment to C. Webster of the sum of one hundred and seventeen dollars and fifty-five cents ($117.55), with interest, the property covered by said deed of trust being more particularly described in said deed of trust and schedule thereto attached;

and (*c*) to C. H. Albaugh and J. W. Wilson, by deed dated November 26, 1900, which was recorded on the same day in Liber 2529, folio 157, of the land records of the District of Columbia, said deed being a deed in trust to secure the payment to D. R. McNaught of the sum of three hundred and seventeen dollars and fifty-two cents ($317.52), with interest, the property covered by said deed of trust being more particularly described in a paper annexed to said deed as recorded and marked Schedule "A."

5. And for a further plea to the first count of the plaintiff's declaration the defendant says that in and by said policy of insurance it was provided that if the subject-matter of the insurance should be personal property the said policy should be void if said property should be or become encumbered by a chattel mortgage, and, in fact, the subject of insurance in said policy was wholly personal property, and that the same was encumbered by certain chattel mortgages, as more specifically set forth in the above plea numbered four.

6. And for a further plea to the first count of the plaintiff's declaration the defendant says that in and by said policy of insurance it was provided that if the subject of the insurance should be personal property the said policy should be void if said property should be or become encumbered by chattel mortgage, and that in fact the subject of insurance in said policy was wholly personal property, and that after the execution of the said policy, to wit, on February 7, 1901, the said plaintiff executed a chattel mortgage, whereby she encumbered the personal property or part thereof covered by said policy of insurance, and conveyed the same by deed dated February 7, 1901, which was recorded on the same day in Liber 2533, folio 322, of the land records of the District of Columbia, said deed being in trust to secure the payment to D. R. McNaught of the sum of four hundred and twenty dollars ($420.00), with interest, the property covered by said deed of trust being more particularly described in a paper annexed to said deed as recorded and marked Schedule "A."

* * * * * * *

A. B. DUVALL,
Attorney for Defendant.

5 *Demurrer to 5th and 6th Pleas.*

Filed July 26, 1901.

In the Supreme Court of the District of Columbia.

MARTHA I. HUNT, Plaintiff,
vs.
THE SPRINGFIELD FIRE AND MARINE INSURANCE Company (a Corporation), Defendant. } At Law. # 44753.

Now comes the plaintiff and demurs to the defendant's fifth (5th) and sixth (6th) pleas, and states that the same are bad in substance.

JOHN C. GITTINGS,
JOHN R. SHIELDS,
Attorneys for Plaintiff.

One of the matters of law intended to be argued is that the matter alleged in the fifth plea is no defense, unless the defendant suffered some detriment thereby.

One of the matters of law intended to be argued is that the terms "chattel mortgage" and "chattel trust," as set forth in the sixth plea, are not interchangeable.

Supreme Court of the District of Columbia.

FRIDAY, *November* 15*th*, 1901.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

* * * * * * *

MARTHA I. HUNT, Plaintiff,
vs.
THE SPRINGFIELD FIRE AND MARINE INSURANCE Company (a Corporation), Defendant. } No. 44753. At Law.

Come now the parties herein, by their respective attorneys, and the plaintiff's motion herein filed to strike out defendant's 2nd and 4th pleas coming on to be heard, it is, upon consideration thereof, ordered that said motion be, and it is hereby, granted, with leave, however, to defendant to plead over, as *he* may be advised, within ten days hereof; and, further, the plaintiff's demurrer to the defendant's 5th and 6th pleas coming on for hearing, it is, upon consideration thereof, ordered that said demurrer be, and it is hereby, overruled; to which the said plaintiff, by her attorney, in open court, notes an exception.

6 Supreme Court of the District of Columbia.

WEDNESDAY, *December* 18, 1901.

Session resumed pursuant to adjournment, Hon. H. M. Clabaugh, justice, presiding.

MARTHA I. HUNT, Plaintiff,
vs.
THE SPRINGFIELD FIRE AND MARINE INS. Company (a Corporation), Defendant. } No. 44753. At Law.

It appearing to the court that an order was passed herein November 15th, 1901, overruling plaintiff's demurrer to defendant's fifth and sixth pleas, and the plaintiff now in open court electing to stand upon said demurrer, judgment is ordered; therefore it is considered that the said plaintiff herein take nothing by this suit; that said defendant go thereof without day and recover against said plaintiff its costs of defense, to be taxed by the clerk, and have execution thereof. From the aforegoing the plaintiff, by her counsel, in open court, notes an appeal to the Court of Appeals and prays that bond for costs on said appeal be fixed; whereupon the court orders that such a bond in the sum of one hundred ($100.00) dollars, with surety to be approved by the court, be filed herein, or that in lieu of such appeal bond she is hereby granted leave to deposit fifty ($50.00) dollars in the registry of this court.

Memorandum.

1901, December 19.—Bond on appeal filed.

Order for Record on Appeal.

Filed December 20, 1901.

In the Supreme Court of the District of Columbia, the 20th Day of December, 1901.

MARTHA I. HUNT
vs.
THE SPRINGFIELD FIRE AND MARINE INSURance Company (a Corporation). } At Law. No. 44753.

The clerk of said court will make record for the Court of Appeals, including only the following pleadings, to wit:

Declaration.

Defendant's 5th and 6th pleas.

Plaintiff's demurrer thereto.

Order overruling demurrer, and the judgment of the court thereon.

JOHN C. GITTINGS,
Attorney for Plaintiff.

O K.
A. B. DUVALL.

7 UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Supreme Court of the District of Columbia.

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 9, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 44,753, at law, wherein Martha I. Hunt is *plaintiff and The Springfield Fire and Marine Insurance Company* is defendant, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 13th day of January, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1169. Martha I. Hunt, appellant, *vs.* The Springfield Fire and Marine Insurance Company, a corporation. Court of Appeals, District of Columbia. Filed Jan. 17, 1902. Robert Willett, clerk.

8 FRIDAY, *April 4th, A. D.* 1902.

MARTHA I. HUNT, Appellant,
vs.
THE SPRINGFIELD FIRE AND MARINE INSURANCE COMPANY, a Corporation. } No. 1169.

The argument in the above entitled cause was commenced by Mr. John C. Gittings attorney for the appellant, and was continued by Mr. A. B. Duvall attorney for the appellee, and was concluded by Mr. John C. Gittings attorney for the appellant.

9 MARTHA I. HUNT, Appellant,
vs.
THE SPRINGFIELD FIRE AND MARINE INSURANCE COMPANY, a Corporation. } No. 1169.

(Mr. Justice SHEPARD delivered the opinion of the court.)

This action was begun by appellant as plaintiff to recover upon a policy of fire insurance covering certain household furniture and other personal property. The declaration is in the ordinary form containing all the necessary allegations.

Several pleas were filed by the defendant, to which the plaintiff demurred. Only one of these, with the action thereon, need be considered.

It alleged a condition of the policy to the effect that the same should be void if the property insured should be or become encumbered by a chattel mortgage; and further, that after the execution of the policy the plaintiff did encumber the same by a chattel mortgage in the form of a conveyance to a certain party in trust with power of sale and so forth, to secure certain indebtedness therein recited.

The court overruled the demurrer to this plea and, plaintiff having elected to stand upon her demurrer, entered judgment for the defendant, from which this appeal has been prosecuted.

It is conceded that the condition pleaded is a valid one and, if broken, presents a bar to the action. Dumas *v.* Insurance Co. 12 App. D. C. 245.

But the contention is, that the terms of the condition must be strictly construed, resolving all doubts in favor of the insured; and that so construed there is a distinction at law, to which effect must be given, between the chattel mortgage therein mentioned and a chattel deed in trust as described in the plea.

The argument in support of this contention is ingenious, but lacks substantial foundation. There is no ambiguity in the language of the condition set out in the policy. Its plain purpose is to guard against the encumbrance of the insured personal property, without the knowledge and consent of the insurer, whether it be by way of a technical chattel mortgage simply, by such a mortgage with power of sale in the mortgagee, or by a conveyance in trust to third persons with similar power of sale in case of the default of the mortgagor. Each is a chattel mortgage within the ordinary meaning of the term. Middleton *v.* Park 3 App. D. C. 149, 164.

That case was an action of ejectment to recover the possession of land that had been sold under a deed of trust executed by a guardian under the authority of the equity court. The authority given was to "mortgage" the land. The case turned upon the contention, which was denied, that the power to "mortgage" did not authorize a security by conveyance in trust. That contention had more plausible foundation than the one in the case at bar.

The court was right in overruling the demurrer and the judgment must be affirmed, with costs. It is so ordered.

Affirmed.

11 TUESDAY, *May 6th, A. D.* 1902.

MARTHA I. HUNT, Appellant,
vs.
THE SPRINGFIELD FIRE AND MARINE INSURANCE COMPANY, a Corporation. } No. 1169. April Term, 1902.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the supreme court of the District of Columbia, and was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that the judgment of the said supreme court, in this cause, be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE SHEPARD.

May 6, 1902.

FRIDAY, *June 5th, A. D.* 1903.

MARTHA I. HUNT, Appellant,
vs.
THE SPRINGFIELD FIRE AND MARINE INSURANCE COMPANY, a Corporation. } No. 1169.

On motion of Mr. D. W. Baker on behalf of counsel for the appellant, it is ordered by the court that a writ of error to remove this cause to the Supreme Court of the United States issue, and the bond for costs is fixed at the sum of two hundred dollars.

12 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the justices of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals before you, or some of you, between Martha I. Hunt, appellant, and The Springfield Fire and Marine Insurance Company, a corporation, appellee, a manifest error hath happened, to the great damage of the said appellant as by her complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings afore-

said being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 5th day of June, in the year of our Lord one thousand nine hundred and three.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

13 (*Bond on Writ of Error.*)

Know all men by these presents, that we, Martha I. Hunt, as principal, and A. L. Saltzstein, as surety, are held and firmly bound unto Springfield Fire and Marine Insurance Company, a corporation in the full and just sum of two hundred dollars to be paid to the said Springfield Fire and Marine Insurance Company its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this sixth day of June, in the year of our Lord one thousand nine hundred and three.

Whereas, lately at a Court of Appeals of the District of Columbia, in a suit depending in said court between Martha I. Hunt, appellant and Springfield Fire and Marine Insurance Company, appellee, a judgment was rendered against the said Martha I. Hunt and the said Martha I. Hunt having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Springfield Fire and Marine Insurance Company citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such, that if the said Martha I. Hunt shall prosecute said writ of error to effect, and answer all costs if she fail to make her plea good, then the above obligation to be void; else to remain in full force and virtue.

MARTHA I. HUNT, [SEAL.]
By D. W. BAKER, *Att'y in Fact.*
A. L. SALTZSTEIN. [SEAL.]

Sealed and delivered in the presence of—

——— ———.

O. K.
A. B. D.

Approved by—
M. F. MORRIS,
Associate Justice Court of Appeals of the District of Columbia.

[Endorsed:] No. 1169. Martha I. Hunt, *vs.* The Springfield Fire and Marine Insurance Co. Bond on writ of error to Sup. Court U. S. Court of Appeals, District of Columbia Filed Jun- 22—1903. Robert Willett clerk.

14 UNITED STATES OF AMERICA, *ss:*

To the Springfield Fire and Marine Insurance Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Martha I. Hunt is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable M. F. Morris, associate justice of the Court of Appeals of the District of Columbia, this 22d day of June, in the year of our Lord one thousand nine hundred and three.

M. F. MORRIS,
Associate Justice of the Court of Appeals of the District of Columbia.

Service acknowledged
A. B. DUVALL, *Att'y.*

6/23/03.

[Endorsed:] Court of Appeals, District of Columbia. Filed Jun- 23 1903 Robert Willett, clerk.

15 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 14 inclusive contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Martha I. Hunt, appellant *vs.* The Springfield Fire and Marine Insurance Company, a corporation, No. 1169, April term, 1903, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 23d day of June, A. D. 1903.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: File No. 18,983. District of Columbia Court of Appeals. Term No. 65. Martha I. Hunt, plaintiff in error, *vs.* The Springfield Fire and Marine Insurance Company. Filed June 24, 1903. File No. 18,983.